

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DEVORA SHABTAI,

Plaintiff,

20-cv-10868 (JGK)

- against -

MEMORANDUM OPINION
AND ORDER

GOLDIE SHABTAI,

Defendant.

JOHN G. KOELTL, District Judge:

The pro se plaintiff, Devora Shabtai, brought this action against her sister, Goldie Shabtai, a.k.a. Zehavit Michael. The defendant, after having filed an answer, see ECF Nos. 29, 40, filed a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c), arguing that the Court lacks subject matter jurisdiction. ECF No. 57. The defendant then filed another motion for judgment on the pleadings addressing the merits of the plaintiff's claims. ECF Nos. 85, 86. For the following reasons, the first motion is **granted**, and the second motion is **denied** as moot.

"Where a Rule 12(c) motion asserts that a court lacks subject matter jurisdiction, the motion is governed by the same standard that applies to a Rule 12(b)(1) motion." Cruz v. AAA Carting & Rubbish Removal, Inc., 116 F. Supp. 3d 232, 239 (S.D.N.Y. 2015). Accordingly, "[a]s the party seeking to invoke the subject matter jurisdiction of the district court, the plaintiff bears the burden of demonstrating by a preponderance

of the evidence that there is subject matter jurisdiction in the case." Eugenia VI Venture Holdings, Ltd. v. Surinder Chabra, 419 F. Supp. 2d 502, 505 (S.D.N.Y. 2005). The Court "may resolve disputed jurisdictional facts by referring to evidence outside the pleadings."¹ Id.

Under 28 U.S.C. § 1332(a), a federal court has subject matter jurisdiction over an action that is between "(1) citizens of different States; [or] (2) citizens of a State and citizens or subjects of a foreign state." A United States citizen domiciled abroad, however, is "stateless" for the purpose of § 1332, and is therefore "neither [a] citizen[] of any state of the United States nor [a] citizen[] or subject[] of a foreign state." Force v. Facebook, Inc., 934 F.3d 53, 74-75 (2d Cir. 2019). Accordingly, such a person fits into none of the categories contemplated by § 1332, and "a suit by or against [a] United States citizen[] domiciled abroad may not be premised on diversity." Id.

¹ Under Local Rule 12.1, special procedures are applicable where a represented party refers to matters outside of the pleadings in support of a motion for judgment on the pleadings against a pro se party. However, these procedures are only applicable where the movant is represented by counsel. Because the defendant is also pro se, the defendant is not required to comply with these procedures in this case. In any event, the Court can dismiss a case sua sponte for lack of subject matter jurisdiction and it is clear that the Court lacks subject matter jurisdiction in this case.

In this case, the parties agree that the defendant is domiciled in Israel, and the defendant has provided evidence that she is a United States citizen, namely, her passport. ECF No. 106. The official United States passport documents that the defendant is a citizen of the United States. The plaintiff disputes that the defendant is a United States citizen, see ECF No. 103, but the plaintiff's conclusory assertions are insufficient to call into question the defendant's citizenship: the plaintiff must "come forward with evidence of [her] own to controvert that presented by the defendant." Glaser v. Upright Citizens Brigade, LLC, 377 F. Supp. 3d 387, 393 (S.D.N.Y. 2019). Because the plaintiff has proffered no such evidence, the plaintiff has failed to meet her burden of proving jurisdictional facts by a preponderance of the evidence. The Court therefore lacks diversity of citizenship subject matter jurisdiction under 28 U.S.C. § 1332. See id. at 146.

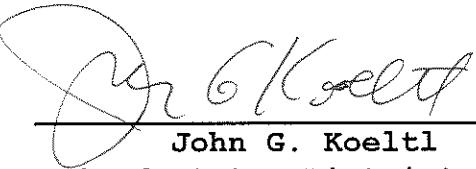
Because the operative complaint brings only state law claims, see ECF No. 21, the Court also lacks subject matter jurisdiction under 28 U.S.C. § 1331. In any event, the plaintiff does not argue that there is any other basis for subject matter jurisdiction, and the Court therefore lacks subject matter jurisdiction.

CONCLUSION

The Court has considered all of the arguments of the parties. To the extent not addressed above, the arguments are either moot or without merit. For the reasons explained above, the first motion for judgment on the pleadings, ECF No. 57, is **granted**. The second motion for judgment on the pleadings, ECF No. 85, is therefore **denied** as moot. The Clerk is directed to enter judgment dismissing this action without prejudice. The plaintiff has not sought leave to file an amended complaint and any amendment would be futile. The Clerk is directed to close all pending motions and to close this case. The Clerk is directed to mail a copy of this Memorandum Opinion and Order to the pro se parties.

SO ORDERED.

Dated: New York, New York
 June 10, 2022


John G. Koeltl
United States District Judge